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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:

PG&E CORPORATION

and

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

Case No. 19-30088-DM
Chapter 11
Lead Case
Jointly Administered

**MOTION TO DEEM CLAIMS OF
SCOTT, AMANDA OLSEN, CHERI ANN
SALERNO, SUSAN FARRELL, JASON
REID, PHYLLIS HOXIE MONROE
TIMELY FILED**

Date: September 22, 2020

Time: 10:00 am

Location: United States Bankruptcy Court
450 Golden Gate Ave Ctrm 17
San Francisco, CA 94102

Judge: Honorable Dennis Montali

Pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, Creditors James Scott, Amanda Olsen, Cheri Ann Salerno, Susan Farrell, Jason Reid, and Phyllis Hoxie Monroe (“Creditors”) hereby move for entry of an order deeming their proofs of claim in these cases timely filed.

SUMMARY OF ARGUMENT

Under the flexible standard for excusable neglect, Creditors’ claims should be deemed timely. Creditors’ retained the law firm of Cutter Law, P.C. late in December of 2019 to file claims related to the Camp Fire. The associate attorney to whom the executed retainers were directed was out on vacation

1 at the time and only upon her return to the office in the middle of January 2020 did the firm realize that
2 Creditors' retainers had been sent to the firm and that no claims had been filed prior to the bar date.
3 Under the factors in the United States Supreme Court case of *Pioneer Investment Services v. Brunswick*
4 *Associated Ltd. Partnership* 507 U.S. 380 (1993), the circumstances of this case present excusable
5 neglect. In following *Pioneer*, the Ninth Circuit found that even when experienced counsel failed to
6 calendar an appellate deadline with no extraneous circumstances, a finding of excusable neglect was
7 proper. *Pincay v. Andrews* 389 F.3d 853, 859 (9th Cir. 2004). This case presents no prejudice to the
8 Debtors, presents no delay to the judicial administration of this case, and is made in good faith. Rather,
9 to deny this claim would work a severe injustice to Creditors, which is an important factor that should
10 be weighed. *Id.*

11 **PROCEDURAL BACKGROUND**

12 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric Company
13 ("Debtors") filed a voluntary Chapter 11 Petition. See Dkt. 1. On July 2, 2019, the Court entered an
14 order establishing October 21, 2019 ("the bar date") as the deadline for Fire Victim claimants to file
15 proofs of claim in this bankruptcy. See Dkt. 2806. That deadline was extended to December 31, 2019,
16 ("the extended bar date."). See Dkt. 4872. As more fully discussed below, Creditors' personal injury
17 counsel filed proofs of claim as follows:

18 Susan Farrell, claim number 97693, filed March 9, 2020

19 Phyllis Hoxie Monroe, claim number 97683, filed March 9, 2020

20 James Scott, claim number 97705, filed March 10, 2020

21 Amanda Olsen, claim number 97714, filed March 10, 2020

22 Jason Reid, claim number 97684, filed March 10, 2020

23 Cheri Ann Salerno, claim number 97657, filed March 11, 2020

24 **FACTUAL BACKGROUND**

25 1. Each of the Creditors have a fire claim related to the 2018 Camp Fire and are represented
26 by John G. Roussas of the Cutter Law P.C. firm in Sacramento, California. See Proofs of Claim 97693,
27 97683, 977095, 97714, 97684, and 9657. The reason for each of Creditors' claims being untimely filed
28 and the resulting actions to resolve this issue are identical.

2. From September through December 2019, Cutter Law had an established protocol in place for receiving Camp Fire retainer agreements from an agent. The agent would forward executed retainers and documentation to an intake person, a clerical person, and an attorney at Cutter Law for processing. These procedures had been in place and effectively working since September 2019. On December 19, 2019, attorney Jennifer S. Domer left the country for vacation, returning on January 16, 2020. Upon her return, Ms. Domer discovered that the agent had mistakenly forwarded Creditors' retainer agreements only to her email address, contrary to the procedures established earlier that same year. Not only were the retainers not sent to an intake person nor a clerical person, Ms. Domer was not an attorney who they should have been sent. Ms. Domer had not been checking her email during vacation and did not discover the executed retainers until after her return in January. Domer Decl. ¶¶ 2-6.

3. On January 16, 2020, attorney John Roussas learned of Creditors' misdirected retainer agreements. At that time, he knew that the claims bar date of December 31, 2019 had already passed. He promptly investigated to determine whether claims had been filed for Creditors and discovered that no claims had been filed by the bar date. Roussas Decl. ¶¶ 3-4.

4. After ascertaining that no claims had been filed for Creditors, Mr. Roussas began performing legal search as to the best procedure to address late filed claims. Roussas Decl. ¶¶ 5-6.

5. Mr. Roussas also directed his associate to reach out to the tort claimant committee to see if there would be any late-filed claims procedures for Camp Fire claimants. On February 6, 2020, Mr. Roussas learned that there were no plans to implement a unique procedure to address late-filed claims. Roussas Decl. ¶ 7.

6. Mr. Roussas consulted with multiple bankruptcy attorneys to seek relief from the late-filed claims. His office ultimately filed claims for the Creditors on March 9, 10, and 11, 2020. Roussas Decl. ¶ 8-9.

7. Due to the COVID-19 pandemic, Mr. Roussas' office was working remotely and, by the first week of April, was closed to in-person work. Roussas Decl. ¶ 10.

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1 8. After reviewing the Fire Victim Claims Resolution Procedures on July 8, 2020, Mr.
2 Roussas determined that filing a motion to deem the late-filed claims as timely was the best procedure
3 to protect his Clients' interests in this case. Roussas Decl. ¶¶ 12-14.

4 ARGUMENT

5 The time in which to file claims in a Chapter 11 Bankruptcy may be extended by motion based
6 on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

7 (b) Enlargement.

8 (1) In general. Except as provided in paragraphs (2) and (3) of this
9 subdivision, when an act is required or allowed to be done at or within a
10 specified period by these rules or by a notice given thereunder or by order
11 of court, the court for cause shown may at any time in its discretion (1)
12 with or without motion or notice order the period enlarged if the request
13 therefor is made before the expiration of the period originally prescribed
14 or as extended by a previous order or (2) **on motion made after the**
15 **expiration of the specified period permit the act to be done where the**
16 **failure to act was the result of excusable neglect.**

17 Fed. R. Bankr. P. 9006(b)(1) (emphasis added).

18 Determination of excusable neglect has been interpreted by the United States Supreme Court
19 as an equitable consideration.

20 "We conclude that the determination is at bottom an equitable one, taking account of
21 all relevant circumstances surrounding the party's omission. These include . . . the
22 danger of prejudice to the debtor, the length of the delay and its potential impact on
23 judicial proceedings, the reason for the delay, including whether it was within the
24 reasonable control of the movant, and whether the movant acted in good faith." *Pioneer*
25 *Inv. Servs v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

26 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
27 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897 (Bankr. E.D.
28

1 Pa. 1995) (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
2 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”).

3 Further, the delay is not significant. Creditors’ claims were filed just three months after the
4 extended bar date and allowing the late claims will not delay the proceedings as the Fire Victim Trust,
5 from which his claim will be paid, is still in the early stages of administering claims. Creditors’ personal
6 injury counsel acted diligently upon realizing that Creditors’ claims had not been filed by the bar date
7 and took appropriate action to research the applicable law and procedures on how to proceed to remedy
8 the problem, including seeking counsel from bankruptcy practitioners. Creditors’ personal injury
9 counsel filed claims just three months after the extended bar date and continued to research how to
10 validate the late-filed claims in the midst of a global pandemic. Under these circumstances, Creditors’
11 personal injury counsel’s actions were as diligent and prompt as could be expected.

12 Excusable neglect can be found even where sophisticated attorneys miss a deadline. *ZILOG*,
13 *Inc. v. Corning (In re ZILOG, Inc.)* 450 F.3d 996, 1006 (9th Cir. 2006). Here, Creditors’ personal injury
14 counsel missed the extended bar date by virtue of the fact that one of their associates was out on a
15 planned vacation and did not timely receive executed retainers from Creditors. Further, Creditors’
16 personal injury counsel acted in good faith by diligently investigating late-claims procedures and filing
17 claims upon the conclusion of their research. Creditors’ failure to timely file claims was not based on
18 litigation tactics where a party deliberately misses a deadline to gain advantage. *Venice Baking Co. v.*
19 *Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533.

20 And, finally, the likelihood of injustice is great if these claims are not permitted. Creditors are
21 Camp Fire victims who seek compensation for their losses through this bankruptcy. Creditors’ claims
22 were untimely filed by no fault of their own. Furthermore, Creditors’ claims, if deemed timely filed by
23 the Court, would have little to no appreciable impact on these proceedings. *See In re Lyondell Chemical*
24 *Co.*, 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016) (“The length of delay in time is only given meaning
25 by its effect on the administration of the case.”). Denying compensation to each of the Creditors would
26 result in a severe injustice especially compared the nominal, if any, prejudice that would be suffered
27 by Debtors by deeming Creditors’ claims timely filed.

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CONCLUSION

Because consideration of the Pioneer factors points overwhelmingly to Creditors' neglect having been excusable, the motion should be granted and each of the Creditors' claims should be deemed timely. Accordingly, Creditors request that this Court enter an order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

1. Granting this Motion;
2. Directing that the following claims are deemed timely filed:
 - a. Susan Farrell, claim number 97693, filed March 9, 2020
 - b. Phyllis Hoxie Monroe, claim number 97683, filed March 9, 2020
 - c. James Scott, claim number 97705, filed March 10, 2020
 - d. Amanda Olsen, claim number 97714, filed March 10, 2020
 - e. Jason Reid, claim number 97684, filed March 10, 2020
 - f. Cheri Ann Salerno, claim number 97657, filed March 11, 2020
3. Granting such other or further relief as the Court deems just and proper.

Dated: August 21, 2020

Law Office of Rick Morin, PC



By: Richard Morin
Attorney for Creditors James Scott,
Amanda Olsen, Cheri Ann Salerno,
Susan Farrell, Jason Reid, and Phyllis
Hoxie Monroe